

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of

Local Competition and Broadband Reporting

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CC Docket No. 99-301

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FCC MAIL SECTION

## REPORT AND ORDER

Adopted: March 24, 2000

Released: March 30, 2000

By the Commission:

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## I. INTRODUCTION

1. In this Report and Order, we adopt rules and a standardized form (FCC Form 477) to collect basic information about two critical and dynamic areas of the communications industry: the development of local telephone service competition and the deployment of broadband services. Access to this information will materially improve our ability to develop, evaluate, and revise policy in these rapidly changing areas and will provide valuable benchmarks for Congress, this Commission, other policy makers, and consumers. More broadly stated, we conclude that this information will make more effective our actions to implement the pro-competitive, deregulatory provisions of the Telecommunications Act of 1996 (1996 Act).<sup>1</sup>

2. The 1996 Act directs the Commission to take actions to open all telecommunications markets to competition and seeks to promote innovation and investment by all participants, including new entrants.<sup>2</sup> A central task in creating this new framework is the opening of previously monopolized local telecommunications markets.<sup>3</sup> By collecting timely and reliable information about the pace and

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<sup>1</sup> Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56, codified 47 U.S.C. §§ 151 *et. seq.* (the 1996 Act). The 1996 Act amended the Communications Act of 1934 (the Communications Act or the Act).

<sup>2</sup> Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104<sup>th</sup> Cong., 2d Sess., at 1 (1996) (*Joint Explanatory Statement*).

<sup>3</sup> See, e.g., 47 U.S.C. §§ 251, 252, 271.

extent of competition for local telephone service in different geographic areas -- including rural areas -- we significantly improve our ability to evaluate the effectiveness of actions the Commission and the states are taking to reduce economic and operational barriers to entry into those local markets. Such knowledge is a critical precursor to our ability to substantially or even totally deregulate as it becomes clear that markets are competitive.

3. Moreover, this information collection program will also enable us to better assess the availability of broadband services such as high-speed Internet access, so that we can better satisfy our duty to encourage the deployment of advanced telecommunications capability as Congress directed us to do in section 706 of the 1996 Act.<sup>4</sup> We concluded our first report on the deployment of advanced telecommunications capability in February 1999, at which time we committed to monitoring advanced telecommunications deployment through annual reports.<sup>5</sup> We also stated our intention to improve and

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<sup>4</sup> Pub. Law No. 104-104, Title VII, § 706, reproduced in the notes under 47 U.S.C. § 157. See § 706 of the 1996 Telecommunications Act (the 1996 Act) is § 706, Pub. L. 104-104, Title VII, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 USC § 157. It provides:

SEC. 706. ADVANCED TELECOMMUNICATIONS INCENTIVES.

(a) In General.--The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

(b) Inquiry.--The Commission shall, within 30 months after the date of enactment of this Act, and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

(c) Definitions.--For purposes of this subsection:

(1) Advanced telecommunications capability.--The term "advanced telecommunications capability" is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(2) Elementary and Secondary Schools.--The term "elementary and secondary schools" means elementary and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

<sup>5</sup> See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Report, 14 FCC 2d 2398, CC Docket No. 98-146, FCC 99-5 (rel. Feb. 2, (continued....))

expand upon the data that we receive.<sup>6</sup>

4. We recently initiated our second inquiry into the deployment of advanced telecommunications capability.<sup>7</sup> In the *Second Advanced Telecommunications NOI*, we explicitly stated our intention to use information collected through this fact and data gathering program in the future section 706 reports. Indeed, it is our expectation that this data will enhance our subsequent annual reports and facilitate a more comprehensive understanding of the deployment of advanced telecommunications capabilities and broadband services, particularly in rural areas.<sup>8</sup>

5. Gathering data about the development of competition for local telephone service and broadband deployment will help us to achieve the complementary goal reflected in the 1996 Act of reducing government regulation wherever possible. For example, section 10(b) requires the Commission to "consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."<sup>9</sup> Similarly, section 11 requires the Commission to undertake regular reviews of our existing regulations with a view towards their elimination. In relevant part, section 11 directs the Commission to "determine whether any . . . regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."<sup>10</sup> In order to satisfy these directives, we need a factual basis to evaluate the nature and impact of our existing regulation and, in particular, to identify areas where competition has developed sufficiently to justify deregulation. The data obtained in this collection will go far toward developing such an understanding.

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1999) (*First Advanced Telecommunications Report*). Key issues in evaluating deployment of advanced telecommunications capabilities include the state of competition in the residential advanced telecommunications services market, the existence of barriers to speedy deployment (especially of new technologies), the nature of demand for advanced telecommunications services among residential customers, and possible slow deployment in rural and low-income areas, and among persons with disabilities.

<sup>6</sup> *First Advanced Telecommunications Report*, ¶ 24.

<sup>7</sup> See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, FCC 00-57, CC Docket No. 98-146 (rel. Feb. 18, 2000) (*Second Advanced Telecommunications NOI*).

<sup>8</sup> We note that, in the *Second Advanced Telecommunications NOI*, we distinguished the terms "advanced telecommunications capability" and "broadband services." In the *First Advanced Telecommunications Report*, we defined "advanced telecommunications capability" as upstream and downstream communications paths "having the capability of supporting . . . a speed . . . in excess of 200 kilobits per second (Kbps) in the last mile." *First Advanced Telecommunications Report*, ¶ 20. Thus, in the *Second Advanced Telecommunications NOI*, we used the term "advanced telecommunications capability" when addressing the specific requirements of section 706. In contrast, we used the term "broadband services" to refer to a larger set of services that end users can access with asymmetric capabilities and speeds that are less than 200 Kbps, but are generally also considered high-speed (*i.e.*, greater than 128 Kbps in a wireless environment or 144 Kbps in a wireline environment). *Second Advanced Telecommunications NOI*, n.2.

<sup>9</sup> 47 U.S.C. § 160(b).

<sup>10</sup> 47 U.S.C. § 161(a)(2).

6. In crafting this information collection, we seek to minimize the burdens imposed and thus, we limit this effort to specifically targeted information. We focus on easily-quantifiable and readily-available statistics that will reflect the level of service -- local telephony and broadband -- that is actually provided by incumbents and new entrants. We also take steps to reduce the burdens associated with this request for small entities, for example, by exempting the smallest service providers from reporting. We also state our intention to work with small service providers, as issues arise, to facilitate reporting procedures that may have unanticipated, disparate effects on them. We rely heavily on the input of commenters, including many service providers that will report pursuant to this program, which has helped us to refine and clarify our data request. Indeed, we believe that the final rules we adopt here will present a significantly lower burden for service providers than the proposal offered in the Notice which initiated this proceeding.<sup>11</sup> Although there may be additional information that could prove useful to our tasks, we understand that we cannot, in one data collection, gather all of the information relevant to every possible future proceeding. Instead, we expect to obtain a baseline of knowledge and understanding about the market for local telephony and broadband services that will both guide us in assessing the overall effectiveness of our actions and will enable us to ask for more specifically targeted information in discrete proceedings before this Commission. We believe that we have distilled our proposal down to that information which is most essential to tracking the development of local competition and the deployment of broadband service to American consumers. Moreover, and most telling about our goals for this proceeding, we also take affirmative steps to ensure that the information collection does not outlive its usefulness by adopting a sunset provision that will terminate the reporting requirement after five years, unless the Commission affirmatively acts to extend it.

7. Finally, we express appreciation to our colleagues in state public utility commissions for their contributions to this effort, both by filing comments in this proceeding and through their close coordination with our staff. Through this partnership, we have developed a carefully tailored federal reporting requirement that we expect should be useful to the states in evaluating their own policies and, in coordination with the Section 706 Joint Conference<sup>12</sup> and the state commissions, we hope to develop a "best practices" approach which will harmonize any reporting requirements adopted by the state commissions.

## II. EXECUTIVE SUMMARY

### Overview

- We adopt a standardized form (FCC Form 477)<sup>13</sup> for collecting this information. The form is structured to include separate sections on deployment of broadband services, local telephone service competition, and provision of mobile telephony services. We only require providers to complete the portions of the form for which they exceed the reporting thresholds.

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<sup>11</sup> *Local Competition and Broadband Reporting*, Notice of Proposed Rulemaking, FCC 99-283, CC Docket No. 99-301 (rel. Oct. 22, 1999) (*Local Competition and Broadband Reporting Notice*).

<sup>12</sup> See *FCC Establishes Federal-State Joint Conference to Promote Advanced Broadband Services*, News Release (rel. Oct. 8, 1999) (*Joint Conference News Release*). In this Order, we refer to this Joint Conference as the "Section 706 Joint Conference."

<sup>13</sup> The Local Competition and Broadband Reporting form (FCC Form 477) is attached as Appendix B. We refer to the FCC Form 477 generically throughout the item as either "the form" or "the reporting form."

- We require service providers to report data, in accordance with the FCC Form 477, on a state-by-state basis. To develop a more nuanced understanding of local telephone competition and broadband deployment, we direct providers to compile a list of the Zip Codes in which they offer local telephony and broadband services for each state in which they complete a form.
- We decide that we can best balance our need for timely information with our desire to minimize the reporting burden on respondents by requiring providers to report data on a semi-annual basis.
- We conclude that we can exempt from reporting certain of the smallest service providers without materially affecting our ability to effectively assess the development of local telephone competition and the deployment of broadband services. We adopt separate thresholds for reporting data on competition for local telephone services and for reporting data on broadband services.

#### Broadband Reporting

- We require facilities-based providers of broadband services (including incumbent and competitive LECs, cable companies, MMDS providers, other fixed wireless providers, terrestrial and satellite mobile wireless providers, utilities, government entities, and others) to report data about the status of broadband deployment. We exclude resellers of broadband services from this information collection.
- We decide that any facilities-based firm that provides at least 250 full or one-way broadband service lines (or wireless channels) in a given state, or has at least 250 full or one-way broadband customers in a given state, should be required to complete applicable portions of the form for that state.

#### Local Competition Reporting

- We require incumbent and competitive local exchange carriers (LECs) to report data about their provision of local exchange and exchange access services. This obligation applies without regard to the type of technology utilized by the LEC in delivering these services and without regard to the carrier's use of entry strategy (i.e., facilities-based, pure resale, or hybrid). We also require certain facilities-based providers of mobile telephony services to participate, to a limited extent, in this data collection program.
- We decide, for purposes of reporting local competition data, that incumbent and competitive LECs need only complete forms for states in which they provide 10,000 or more voice-grade equivalent lines or wireless channels.

### III. BACKGROUND

8. Notwithstanding the importance of gathering timely and reliable information about the development of local competition and broadband deployment, we have not, heretofore, imposed mandatory data reporting requirements. We have, however, undertaken several initiatives to enhance our general understanding of the evolving nature of local competition and on the deployment of broadband services.<sup>14</sup> For example, the Common Carrier Bureau (Bureau) developed a short survey about the status

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<sup>14</sup> For example, we held an *en banc* hearing and several open fora about the status of local telephone competition in early 1998. See *FCC to Conduct January 29 Presentation on Status of Local Telephone Competition*, Public Notice (rel. Jan. 22, 1998). Similarly, we held an *en banc* hearing on bandwidth issues in the last mile of our (continued....)

of local competition and conducted several rounds of voluntary surveys, initially from a small group of incumbent LECs and eventually expanded to include more incumbents and a small number of competitive LECs.<sup>15</sup>

9. In the *First Advanced Telecommunications Report*, we sought to provide an objective and detailed snapshot of the broadband industry, at that point in its infancy, and an overview of the technical and public policy issues related to this dynamic market. Following release of the *First Advanced Telecommunications Report*, we have taken additional steps to improve our understanding of the broadband industry.<sup>16</sup> For example, the Cable Services Bureau released a staff report on the state of the broadband industry based on monitoring sessions it held with key stakeholders, including representatives from Internet service providers, online service providers, local exchange carriers, long distance telephone companies, cable operators, community organizations, financial analysts, academics and local franchising authorities.<sup>17</sup>

10. On October 7, 1999, we proposed to formalize our monitoring efforts in the *Local Competition and Broadband Reporting Notice*, which initiated this proceeding.<sup>18</sup> In that Notice, we proposed an information collection program that would allow us to gather comprehensive and reliable data about the status of local competition and the deployment of broadband services.<sup>19</sup> We sought comment on all aspects of that proposal, including our tentative conclusions about the type of service providers that should report, exemptions for smaller entities, frequency of reporting, data to be reported, and even the methods (such as electronic filing) of reporting.<sup>20</sup> In response to the Notice, we received comment from over forty parties, including comments from carriers and other non-carrier entities that fell within the scope of our proposed reporting requirement, state public utility commissions, and consumer advocates.<sup>21</sup>

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nation's telecommunications infrastructure on July 9, 1998. See *Commission to Hold Bandwidth En Banc Hearing*, Public Notice (rel. July 9, 1998).

<sup>15</sup> That voluntary survey, which the Bureau issued in February 1998 and refined over the next year, provided the framework for a Bureau-issued Public Notice addressing the need to monitor local competition and served as the basis for a series of Bureau staff reports. See FCC, Common Carrier Bureau, Industry Analysis Division, *Local Competition* (rel. Dec. 1998). This report was updated in August 1999. FCC, Common Carrier Bureau, Industry Analysis Division, *Local Competition: August 1999* (rel. Aug. 1999).

<sup>16</sup> For example, the Common Carrier Bureau revised the voluntary local competition survey to include questions about the number of broadband lines or channels in service to residential customers, and the technologies used to deliver those services. See <[http://www.fcc.gov/ccb/local\\_competition/survey5](http://www.fcc.gov/ccb/local_competition/survey5)>.

<sup>17</sup> FCC, Cable Services Bureau, *Broadband Today*, Staff Report (Oct. 1999).

<sup>18</sup> *Local Competition and Broadband Reporting Notice*.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> A list of commenters is included as Appendix D. Additionally, two parties submitted motions requesting that the Commission accept their late-filed comments. *Roseville Motion for Leave to File* and *Tennessee OAG Motion to Accept Late-Filed Reply Comments*. We grant these motions to the extent that we accept their comments as informal comments pursuant to section 1.419(b) of our rules. 47 C.F.R. § 1.419(b).

(continued....)

#### IV. LOCAL COMPETITION AND BROADBAND REPORTING

11. Based on our experience implementing the 1996 Act and our desire to develop a reliable and empirical understanding about the development of competition for local telephone service<sup>22</sup> and the deployment of advanced telecommunications services, we conclude that gathering comprehensive and consistent information from local telecommunications and broadband service providers is critical to our regulatory responsibilities. Accordingly, we adopt rules that require certain providers of local telecommunications and broadband services to report about the status of their service deployment.<sup>23</sup> As a vehicle for collecting this data consistently and efficiently, we also adopt a Local Competition and Broadband Reporting form, which is attached as Appendix B.<sup>24</sup> In adopting these rules and this form, it is our overarching belief that access to this information will improve our ability to make an informed evaluation of what is actually happening in markets and, thus, to deregulate where possible.<sup>25</sup>

12. The record in this proceeding supports our view that the information collection program adopted here will directly and materially advance our ability to develop, evaluate, and revise broad policies and specific regulations affecting the development of local telephone competition and the deployment of broadband services.<sup>26</sup> We conclude that a better understanding of the pattern and speed of local telephone competition should enable us to assess more precisely regulatory actions taken in

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In the Notice, we referred to comments filed in response to a Public Notice released by the Common Carrier Bureau. *See Local Competition and Broadband Reporting Notice*, ¶ 10 n.17, citing *Common Carrier Bureau Seeks Comment on Local Competition Survey*, Public Notice, 13 FCC Rcd 9279, DA 98-839, CC Docket No. 91-141 (rel. May 29, 1998). Parties that submitted comments in response to the Bureau's Public Notice are listed in Appendix D, as well, and their comments are referred to a "Public Notice Comments" or "Public Notice Reply Comments."

<sup>22</sup> For simplicity and only for purposes of this proceeding, we use the terms "local telephone service," "local telecommunications service," and "local exchange and exchange access services" to refer collectively to the services that are subject to the local competition reporting requirements identified in this order and in our rules. These internal references are developed only for use in this proceeding and do not affect or modify any of our existing definitions of any similar terms, such as "telephone exchange service," "exchange access," and "telecommunications service" as set forth in the Act and our prior orders. *See, e.g.*, 47 U.S.C. §§ 153(16), (46), (47); *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, CC Docket No. 96-45 (1998).

<sup>23</sup> *See* Appendix A, Rules Amended.

<sup>24</sup> *See* Appendix B, Local Competition and Broadband Reporting.

<sup>25</sup> *See, e.g.*, Competition Policy Institute Reply Comments at 4 ("While it is true that 'reporting is a form of regulation', we also think that, if the Commission is ultimately to modify its regulatory policies as competition progresses, it must have comprehensive information to do so." (Citations omitted)).

<sup>26</sup> *See, e.g.*, NTCA Comments at 1 ("The Commission must have a sufficiently complete knowledge base from which to draw its conclusions as it considers and enforces rules and policies that will shape the future of the telecommunications industry."); NEXTLINK Comments at 1-2; NorthPoint Comments at 2; Competition Policy Institute Reply Comments at 2. *Contra, e.g.*, AT&T Comments at 2-7 (stating that the proposed data collection would be unnecessarily burdensome and would not help the Commission's decision-making process); Frontier Comments 1-3 (arguing that the Commission should continue a voluntary program).



connection with sections 251 and 252 of the Act, including actions by the Commission and the states concerning the availability of unbundled network elements and the implementation of pricing methodologies. Similarly, we agree with the many commenters that note the value of this information in identifying situations where exercise of the Commission's forbearance authority may be appropriate.<sup>27</sup> We disagree with AT&T's conclusion that the Commission should seek data on local telecommunications competition only in the context of discrete rulemaking proceedings.<sup>28</sup> To the contrary, and in addition to the uses noted above, we conclude that the data collected in this proceeding will serve as a valuable benchmark for comparison with data filed by commenters -- often with vested interest in particular outcomes -- in discrete proceedings. We believe that the data collected here will improve and better inform our analysis in a variety of proceedings, such as applications for in-region, interLATA service under section 271,<sup>29</sup> merger review and compliance,<sup>30</sup> and pricing flexibility decisions.<sup>31</sup>

13. Similarly, gathering data on broadband deployment in a systematic fashion should yield comparable benefits. Our Congressionally mandated efforts to assess the availability of advanced telecommunications capability to all Americans will be substantially aided by a regular and consistent survey of current broadband deployment. This collection will allow us to monitor broadband deployment by a wide variety of entities that might not otherwise participate in a section 706 proceeding and should provide us with a more objective and comprehensive view of broadband deployment. Moreover, we find support for our conclusions about the need for a mandatory collection program in the comments of many potential respondents.<sup>32</sup> We recognize that additional inquiry will continue to be necessary, for example, through the *Second Advanced Telecommunications NOI* and through less formal processes, such as the monitoring sessions employed by the Cable Services Bureau in preparation for the recent *Broadband Today* report. For example, because this information collection focuses on actual provision of service, we may need to take additional steps to examine other aspects of broadband "deployment" and "availability," such as infrastructure deployment.<sup>33</sup> We nevertheless expect that this reporting requirement will provide a baseline for understanding the state of the broadband market that

<sup>27</sup> See, e.g., USTA Comments at 1; U S WEST Comments at 1; BellSouth Reply Comments at 2.

<sup>28</sup> See AT&T Comments at 2, 5.

<sup>29</sup> 47 U.S.C. § 271.

<sup>30</sup> See, e.g., *In re Applications of Ameritech Corp., Transferor and SBC Communications, Inc., Transferee For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Memorandum Opinion and Order, FCC 99-279, CC Docket No. 98-141 (rel. Oct 8, 1999) (*SBC-Ameritech Merger Order*).

<sup>31</sup> *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 14,221, CC Docket No. 96-262, FCC 99-206 at ¶¶ 19-26 (rel. Aug. 27, 1999).

<sup>32</sup> See, e.g., American Cable Association Comments at 1; ALTS Comments at 1; GTE Comments at 2.

<sup>33</sup> See *First Advanced Telecommunications Report*, ¶¶ 7 ("this Report uses actual subscribership as a proxy for 'deployment' and 'availability'"), 30, 54 (discussing the terms "deployment" and "availability").

will help refine those efforts.

14. We adopt our tentative conclusion that only a comprehensively imposed, mandatory data collection effort will provide us with a set of data of uniform quality and reliability.<sup>34</sup> In our experience, other publicly available information sources present less than complete pictures of actual conditions and trends in developing local telephone service markets and in the deployment of broadband. Nor do we find, among the publicly available sources suggested by commenters, the type of regular, consistent and comprehensive data necessary to illustrate developments in these markets.<sup>35</sup> Several commenters suggest, for example, that we rely on company reports to shareholders and to other regulatory agencies, or on the studies prepared by private consulting firms that are based on such company reports.<sup>36</sup> We find these sources to be incomplete and inconsistent.<sup>37</sup> Providers may rely on a variety of different measures that are not easily reconcilable in reporting information such as the number and capacity of lines in service.<sup>38</sup> Among LECs, some may report information, such as the share of total access lines provided solely over their own facilities, in greater detail than other providers report.<sup>39</sup> It is also our experience that publicly available reports often contain data reflecting incongruent time periods. For example, some publicly available reports are based on calendar year data, while others are based on fiscal year or other data. Moreover, financial and investment analysts tend to collect more complete information about publicly traded companies than about privately held companies, and may choose to analyze closely only a subset of companies.<sup>40</sup> Perhaps as a result of this focus, analyst reports tend to lack data concerning developments in rural and underserved markets and by smaller companies.

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<sup>34</sup> See, e.g., Competition Policy Institute Reply Comments at 4 (“the Commission states a convincing case that a mandatory collection will generate more reliable and uniform data than it has previously generated through voluntary data collection”). *Contra* Winstar Comments at 2 (stating that the Commission should rely on voluntary filings and other sources, such as private sector reports).

<sup>35</sup> See, e.g., Omnipoint Comments at 7-8; Prism Comments at 4; AT&T Comments at 4-6.

<sup>36</sup> *Id.*

<sup>37</sup> *Accord* GSA Reply Comments at 4.

<sup>38</sup> See, e.g., P. Bernier, “Getting a Handle on Access Line Growth; Numbers Sometimes Lie,” *X-CHANGE* (Oct. 1998) at 16.

<sup>39</sup> For example, the quarterly reports to shareholders of McLeodUSA include information about the portion of business customer lines and, separately, residential customer lines that the company provides by means of its own facilities. See “McLeodUSA Reports Record Results For Fourth Quarter And 1999” available at <<http://www.mcleodusa.com/aboutmcleodusa/pressreleasesarchive/index.php3>> (Jan. 26, 2000). Other competitive LECs, such as Allegiance, ICG, and Intermedia, have reported the percentage of total lines that are “on switch.” See “Allegiance Telecom Announces Results For Fourth Quarter and Year-End 1999” available at <[http://www.allegiancetelecom.com/investor\\_relations.html](http://www.allegiancetelecom.com/investor_relations.html)> (Feb. 8, 2000); “ICG Reports Fourth Quarter & Year-end 1999 Results” available at <<http://www.icgcom.com/investor/earnings.htm>> (Feb. 29, 2000); “Intermedia Communications Announces Fourth Quarter and Full Year 1999 Results” available at <<http://www.intermedia.com/company/press>> (Feb. 15, 2000). None of these companies provides such information on a state-by-state basis.

<sup>40</sup> See, e.g., K. Hoexter and S. Cross, *Emerging Broadband Competitors* (Merrill Lynch & Co., Feb. 14, 2000) (initiating coverage on 15 competitive LECs).

15. We further conclude that voluntary surveys are an inadequate source of data, given our desire to obtain comprehensive information about the development of these markets that will be comparable over time. In this regard, we disagree with commenters that urge us to continue and expand the Bureau's prior voluntary survey.<sup>41</sup> While the Bureau's voluntary surveys yielded some useful information about evolving patterns of local competition, we conclude that the benefits of a mandatory program far exceed the incremental costs of imposing such a requirement. The Notice described our concerns about the level of participation and, to some degree, the accuracy and consistency of the data filed in the voluntary program.<sup>42</sup> We found, in particular, that competitive LECs declined to participate in the Bureau's voluntary survey. In the course of the four voluntary surveys in which the Bureau invited a dozen competitive LECs to participate, only one competitive LEC participated consistently, and three of the largest competitive LECs did not participate at all.<sup>43</sup> The refusal of such a large portion of invited competitive LECs to provide data on a voluntary basis left significant gaps in the data obtained and limited our ability to draw meaningful conclusions about the development of competition for local telephone service. Moreover, we observed that even carriers that participated actively in the voluntary surveys informed us that they are not interested in participating in long-term voluntary efforts without the required participation of a more comprehensive set of providers.<sup>44</sup> Thus, CompTel's assurances that competitive LECs would be willing to participate in a voluntary survey notwithstanding, we conclude that a mandatory requirement will lead to more consistent and accurate reporting.<sup>45</sup> We expect that a mandatory information collection from a broad array of providers will enable us to draw specific, reliable, and accurate conclusions about the state of local competition and broadband deployment in particular geographic markets -- conclusions that we can document over time.

16. Our conclusions about the need for a systematic data collection are bolstered by a February 1999 resolution of the National Association of Regulatory Utility Commissioners (NARUC), in which NARUC "supports federal efforts to collect consistent data on local competition and broadband deployment on a state-by-state basis."<sup>46</sup> NARUC observed, and we agree, that reliable information is

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<sup>41</sup> See, e.g., Frontier Comments at 2-3; PCIA Comments at 3-4; Winstar Reply Comments at 2-3.

<sup>42</sup> See *Local Competition and Broadband Reporting Notice*, ¶ 18 (observing that some of the firms invited to participate were unwilling to provide any information at all, while, in other cases, participating firms have responded only to some of the surveys).

<sup>43</sup> We also note that, at most, just over half of the invited competitive LECs participated and, in the last two surveys, less than one-third actually filed data.

<sup>44</sup> *Local Competition and Broadband Reporting Notice*, ¶ 18 n.27 (citing correspondence from participants in the voluntary survey).

<sup>45</sup> See CompTel Comments at 5.

<sup>46</sup> The resolution continues as follows:

RESOLVED, that future federal collections of data on local competition and broadband deployment should be conducted on a comprehensive basis; and be it further

RESOLVED, that federal data collections should use the same definitions of geographic areas to the extent possible as used by a state when that state requires local competition or broadband deployment data to be reported for geographic areas smaller than the entire state; and be it further

(continued....)

required if state and federal regulators are to fashion consistent, harmonious policies to carry out Congress's directive to encourage local telephone competition and the widespread deployment of broadband services.<sup>47</sup> We also note that NARUC has recently called again for a federal information collection about the status of local telephone competition and the deployment of broadband services.<sup>48</sup> Indeed, given our commitment to work with state and local governments to develop policies to promote the deployment of advanced services,<sup>49</sup> we take particular note of the supportive comments filed by the Arkansas Commission and the Tennessee Office of the Attorney General.

17. We find unpersuasive the arguments of some commenters that the Commission should rely on state data collection efforts, in lieu of creating a federal program.<sup>50</sup> Again, we think that the resolution adopted by NARUC and the comments filed on behalf of state governments are telling about the need for a comprehensive *federal* program. We recognize that various states have implemented local competition reporting requirements and that some of these state programs ask for information similar to that we seek here.<sup>51</sup> Nothing in the record, however, contradicts our understanding that these state programs are not uniform and differ sufficiently so that carriers serving different states may need to keep multiple sets of records in order to meet similar, but not identical, reporting requirements. We remain convinced that a properly designed federal program can complement state efforts and end up reducing the reporting burdens imposed, overall, on carriers. By making data available to state commissions pursuant to the procedures articulated in this Order,<sup>52</sup> we hope to provide states with valuable empirical

(Continued from previous page)

RESOLVED, that the FCC continue to work with the states and with the industry to determine appropriate and reasonable data collection efforts that are not unduly burdensome or costly.

*See Resolution On The Importance Of Systematically Collecting Data On Local Competition And Broadband Deployment*, Resolutions Adopted by NARUC Board of Directors, Washington, D.C., Feb. 24, 1999, available at <<http://www.naruc.org/rescont.htm#Collecting Data>>.

<sup>47</sup> *Id.* The NARUC Board also observed that "the Federal Communication Commission's current, voluntary data collection efforts do not elicit complete and fully comparable data on local competition and broadband deployment." *Id.*

<sup>48</sup> *See Data Gathering Resolutions*, Resolutions Adopted by NARUC Board of Directors, Washington, D.C., Mar. 8, 2000, available at <<http://www.naruc.org/meetings/2000WinterMeetings/resolutions/index.htm#Telecom>> (stating that the NARUC Board of Directors "commends the Federal Communications Commission for its efforts to collect reliable and systematic information about the state of competition for local telephone services and deployment of broadband services and encourages the Commission to adopt a mandatory information collection as soon as possible").

<sup>49</sup> *See Federal-State Joint Conference on Advanced Telecommunications Services*, Order, FCC 99-293, CC Docket No. 99-294 (rel. Oct. 8, 1999) (*Section 706 Joint Conference*).

<sup>50</sup> *See, e.g.*, Prism Comments at 3-4; MediaOne Comments at 4 ("a new federal reporting program should not be adopted unless and until other reporting mandates are either consolidated or eliminated").

<sup>51</sup> *See, e.g.*, Public Utility Commission of Oregon, Order No. 98-506, available at <<http://www.puc.state.or.us/orders/98orders/98-506.htm>>; Florida Public Service Commission, Division of Telecommunications, *Competition in Telecommunications Markets in Florida* (Dec. 1999; Dec. 1998; Dec. 1997) available from Division of Records and Reporting.

<sup>52</sup> *See infra* Section IV.F. Confidentiality of Data.

information about the status of local telecommunications competition and broadband deployment in their states. With access to this information, some states may find it possible to revise their existing reporting requirements or to refrain from adopting new or additional requirements. Moreover, we look forward to developing, in coordination with the Section 706 Joint Conference and our colleagues in the state commissions, a “best practices” approach for uniform reporting data on the status of local competition and broadband deployment.<sup>53</sup>

18. For all these reasons, we conclude that only a mandatory and systematic collection of local competition and broadband deployment information will provide the comprehensive and consistent set of data that we require to carry out our statutory mandates. While we fully intend to supplement this data with non-duplicative data from Commission, state and other public sources, we believe that the data gathered through this program is not available elsewhere and, moreover, will provide a necessary baseline for accurately analyzing the future development of local competition and broadband deployment. We set out below the individual elements of the data collection program, as formalized in our rules and as embodied in the attached form (FCC Form 477).

#### **A. Types of Entities That Must Report**

##### **1. Background**

19. In the Notice, we tentatively concluded that we should collect data from a wide range of broadband providers.<sup>54</sup> We noted our earlier determination that, as the benchmark for assessing the availability of advanced telecommunications capability, we should define “full broadband” services as having information carrying capacity of over 200 Kilobits per second (Kbps) in each direction, simultaneously.<sup>55</sup> Using the benchmark, we proposed that any entity that either has a defined number of full broadband service lines (or wireless channels) nationwide, or has a defined number of full broadband subscribers nationwide, should be required to complete all relevant parts of the form, regardless of whether that entity meets the criteria for reporting local competition data.<sup>56</sup>

20. In addition, we tentatively concluded that we should collect data concerning the development of competition for local telephone service from large and medium incumbent LECs<sup>57</sup> – as well as their wireline and fixed wireless competitors, and also their mobile wireless telephony potential competitors.<sup>58</sup> Moreover, we tentatively concluded that the obligation to complete the form should not depend on the

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<sup>53</sup> See *Joint Conference News Release* (“The Joint Conference will focus on monitoring advanced services deployment, combining federal-state data collection efforts, minimizing potential inconsistencies and overlaps between federal and state policy, and coordinating federal-state initiatives to promote deployment of advanced services.”). See also Teligent Comments at 2-3 (encouraging the Commission to work with state commissions to reduce duplicative reporting burdens); MediaOne comments at 3.

<sup>54</sup> *Local Competition and Broadband Reporting Notice*, ¶¶ 31-33.

<sup>55</sup> *Id.* at ¶ 41. See also *First Advanced Telecommunications Report*, ¶¶ 20-25.

<sup>56</sup> *Local Competition and Broadband Reporting Notice*, ¶ 31.

<sup>57</sup> See *infra* Section IV.B. Exempting Smaller Entities (discussing reporting thresholds).

<sup>58</sup> *Local Competition and Broadband Reporting Notice*, ¶¶ 25-30.

type of technology that an incumbent LEC or competitive LEC uses to provide local telephone service.<sup>59</sup> We also tentatively decided to collect data from carriers that provide mobile telephony services because of their potential to become substitutes for wireline service.<sup>60</sup>

## 2. Overview

21. Based on our understanding of the development of competition for local telephone service and the deployment of broadband services, we adopt rules that identify which local telecommunications and broadband service providers must comply with this data collection program.<sup>61</sup> In determining the reach of this reporting requirement, we balance our need to collect reliable and comprehensive data with our desire to minimize reporting burdens, particularly for smaller entities that may lack significant resources to devote to regulatory compliance.<sup>62</sup> We are also mindful of differences in the development of competition for local exchange services and the deployment of broadband services. For example, section 706 requires us to monitor the deployment of advanced telecommunications capabilities regardless of the technology or transmission media employed,<sup>63</sup> and we anticipate that some -- if not many -- broadband service providers will not provide telephone service. We thus contemplate that some entities will complete the broadband portion of the form, but will not need to complete the local competition portion of the form because they do not offer local exchange or exchange access services. Accordingly, we adopt a two-part reporting form pursuant to which carriers and other entities must complete applicable portions of the Local Competition and Broadband Reporting Form based on the type of services that they provide and the extent of their deployment of these services.<sup>64</sup> We discuss the reporting requirements for broadband data and local telephone competition data, in turn.

## 3. Entities Reporting Broadband Data

22. In determining what types of entities should report data about broadband deployment, we note that Congress has given the Commission a broad statutory mandate to evaluate the deployment of advanced telecommunications capabilities, that does not distinguish between the transmission media or technology employed.<sup>65</sup> We are also mindful that the market for broadband services is rapidly changing,

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<sup>59</sup> *Id.* at ¶ 27.

<sup>60</sup> See *Local Competition and Broadband Reporting Notice*, ¶¶ 28-29. We noted that providers of mobile telephony services may include facilities-based providers of cellular, broadband personal communications (PCS) service, specialized mobile radio services (SMR), as well as providers using satellite technology. *Id.*

<sup>61</sup> See Appendix A, Rules Amended.

<sup>62</sup> The Commission, in this as well as other proceedings, tries to craft its rules in such a manner that the burdens imposed take into account any potentially disparate impact such rules may have on smaller entities. See *LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning Interstate, Interexchange Marketplace; LEACO Rural Telephone Cooperative, Inc.*, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd. 10,711 (rel. June 30, 1999). See *infra* Section IV.B. Exempting Smaller Entities (for a further discussion of reporting thresholds).

<sup>63</sup> See 1996 Act, § 706(b), (c)(1).

<sup>64</sup> The applicable parts of the survey are those containing questions that pertain to the reporting entity's operations.

<sup>65</sup> See 1996 Act, § 706(b), (c)(1). See *First Advanced Telecommunications Report*, ¶ 23.

both in terms of the type of entities offering these services and in terms of the capability of the services offered.<sup>66</sup> Accordingly, we decide, at this time, to collect data from facilities-based providers of “full broadband” and “one-way broadband” services.<sup>67</sup> We choose to collect data from providers of “full broadband services” because that is the indicia that the Commission previously utilized when assessing the deployment and availability of advanced telecommunications capability pursuant to section 706.<sup>68</sup> We also include providers of “one-way broadband services” because we believe that these services are an important stepping stone in the deployment of advanced telecommunications services and that these services may be priced to be particularly attractive to residential customers seeking, for example, high speed Internet access. Our decision to base the reporting threshold not only on full broadband lines, but also on one-way broadband lines was widely supported by commenters.<sup>69</sup>

23. Given that the broadband market is still in its infancy, we expect that these services may be delivered by a wide variety of providers employing diverse technologies. We have seen evidence that providers of broadband services may include: LECs (incumbent and competitive), cable television companies, utilities, MMDS/MDS/“wireless cable” carriers, other fixed wireless providers, mobile wireless carriers (both terrestrial and satellite-based), government entities, and others.<sup>70</sup> At this time it is not yet clear which broadband services, provided by means of which particular technologies and by what types of carriers, will be purchased in large numbers by American consumers. We believe that only by casting our net wide enough to include all such entities can we discern progress, or the lack of it, in meeting the goals stated in the *First Advanced Telecommunications Report*: a competitive broadband market with many providers, many competing technologies bringing broadband to consumers, and new technologies increasing the capacity of the consumer's broadband service and, in turn, creating demand among consumers for new applications.<sup>71</sup> We note that this inclusive approach was supported by the majority of commenters.<sup>72</sup>

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<sup>66</sup> See *First Advanced Telecommunications Report*, ¶¶ 45-61.

<sup>67</sup> As discussed fully below in Section IV.B., we decide that any entity that provides at least 250 full or one-way broadband service lines (or wireless channels) in a given state, or has at least 250 full or one-way broadband subscribers in a given state, must complete the broadband portion of the survey for that state. See *infra* Section IV.B. Exempting Smaller Entities (discussing reporting thresholds).

<sup>68</sup> See *First Advanced Telecommunications Report*, ¶¶ 20-25. We use the term “full broadband” synonymously with the term “advanced telecommunications capability,” *i.e.*, as having the capability of supporting, in both the downstream and the upstream directions, a speed in excess of 200 Kbps in the last mile. We use the term “one-way broadband” to refer to services with greater than 200 Kbps information carrying capacity in one direction, but not both, in the last mile. See also *supra* n.8 (concerning the generic term “broadband services”).

<sup>69</sup> See, *e.g.*, Arkansas Commission at 4; NorthPoint Comments at 5; Competition Policy Institute Reply Comments at 9-11.

<sup>70</sup> See, *e.g.*, *First Advanced Telecommunications Report*, ¶¶ 54-61 (outlining the deployment of broadband facilities by different kinds of companies).

<sup>71</sup> See *First Advanced Telecommunications Report*, 14 FCC Rcd 2398, 2402. Although these goals were articulated in terms of *residential* consumers in the *First Advanced Telecommunications Report*, we believe that they apply with equal force to the delivery of services for business customers.

<sup>72</sup> See, *e.g.*, ACA Comments at 14; Competition Policy Institute Reply Comments at 10-11.

24. By only requiring reporting from entities that are actually providing service to customers, we necessarily exclude certain entities that might become significant providers of broadband services in the future. We expect that some providers, such as utility companies in rural areas, may have significant broadband-capable infrastructure deployed and, thus, may have the potential to offer broadband services. While insight into this potential would be useful, we nevertheless exclude these providers and focus on actual service delivered because this focus will provide easily-quantifiable and easily-comparable data.<sup>73</sup>

25. Similarly, we precisely target our information collection by only requiring broadband reporting from facilities-based providers.<sup>74</sup> This program provides a unique opportunity to gather data about the development of the "last mile" of network which extends to the customer. As we observed in the *First Advanced Telecommunications Report*, broadband opens the possibility of new facilities to serve the last mile to the home because traditional telephone and cable networks may not be well suited for broadband.<sup>75</sup> At the same time, by excluding from reporting entities that only resell broadband services we will exclude many entities that have not, heretofore, reported to the Commission on a regular basis. For example, Internet Service Providers (ISPs) that only obtain Digital Subscriber Line (DSL) service from telephone companies or high speed data services from cable companies that is incorporated into a premium (higher-speed) option for their Internet service will not report.<sup>76</sup> As noted below, we have designed the form so that these services will be reported by the underlying provider of the broadband facilities.<sup>77</sup>

26. We are persuaded that the threshold for reporting broadband data should be tied not only to full broadband services, but to the provision of either full or one-way broadband services.<sup>78</sup> We agree with commenters who indicate that, at least in certain market segments, one-way broadband services may

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<sup>73</sup> In the *Second Advanced Telecommunications NOI*, the Commission does seek comment on similar issues, including investment and actual and committed deployment of broadband facilities. *Second Advanced Telecommunications NOI*, ¶¶ 11-14.

<sup>74</sup> For purposes of this information collection, by "facilities-based providers," we mean entities that provide broadband services over their own facilities, UNEs, special access lines, and other leased lines and wireless channels that they equip as broadband. See also *infra* Section III.E. Data to Be Reported (discussing the terms "facilities based providers" and "own facilities").

<sup>75</sup> *First Advanced Telecommunications Report*, ¶ 46.

<sup>76</sup> Examples of such arrangements are the agreements under which America Online announced its intention to lease, from Bell Atlantic and SBC Communications, Digital Subscriber Line (DSL) capacity that America Online will incorporate into a premium (higher-speed) option for its Internet service. See "America Online and Bell Atlantic Form Strategic Partnership to Provide High-Speed Access for the AOL Service," Press Release, (Jan. 13, 1999); "America Online and SBC Communications to Offer High-Speed Upgrade to AOL Members," Press Release (Mar. 11, 1999).

<sup>77</sup> See *infra* Section IV.E. Data to Be Reported. See also AT&T Comments at 15-16; BellSouth Reply Comments at 8; Letter from Donna N. Lampert to Magalie Roman Salas (Dec. 3, 1999) (on behalf of America Online, urging the Commission to collect data only from "providers of the transmission services, as opposed to . . . Internet Service Providers").

<sup>78</sup> See, e.g., Arkansas Comments at 4; Bell Atlantic Comments at 6-7; USTA Comments at 6; BellSouth Reply Comments at 7.



be more widely available than full broadband services.<sup>79</sup> Thus, we require respondents to report information about their deployment of one-way broadband services. By tying the reporting requirement to both full and one-way broadband lines, however, we do not revisit our definition of advanced telecommunications capability in this proceeding.<sup>80</sup> Rather, we simply expect to gather data about services that may be stepping stones to full broadband services and we expect that this information will be useful should the Commission decide, in the future, to revise its definition of advanced telecommunications capability in the context of future section 706 reports.<sup>81</sup>

27. We reiterate our conclusion, stated as such in the Notice, that we need not decide broader questions about which broadband services constitute “telecommunications” within the precise terms of the Communications Act of 1934, as amended,<sup>82</sup> in order to include those services within the scope of this data collection program.<sup>83</sup> As we observed in the Notice,<sup>84</sup> some broadband facilities and services may not be “telecommunications” within the meaning of the Act,<sup>85</sup> but may as a practical matter be competitive with and substitutable for broadband telecommunications.<sup>86</sup> Thus, for example, we will collect data from providers of broadband services delivered over cable television systems because these services compete directly with services that clearly are telecommunications, even though the Commission has not yet made a determination about the regulatory classification of these services.<sup>87</sup>

#### 4. Entities Reporting Local Competition Data

28. We decide, based on our determination that we need comprehensive data about developing competition for local telephone service, that all local exchange carriers (LECs), both incumbent and competitive, should complete the form if they exceed our defined threshold for deployment of service.<sup>88</sup> We also require certain providers of mobile telephony services to participate in this data collection program because of the potential of their services to become substitutes for the wireline-delivered local exchange services offered by incumbent and competitive LECs. We believe, as explained in more detail below, that only by collecting data from this broad range of market participants will we be able to gain a

<sup>79</sup> See, e.g., NorthPoint Comments at 5; Bell Atlantic Comments at 6; Arkansas Commission Comments at 4.

<sup>80</sup> See *Second Advanced Telecommunications NOI*, ¶ 9.

<sup>81</sup> *Id.* at n.18. See Bell Atlantic Comments at 6; Arkansas Commission Comments at 4 (“The inclusion of asymmetric services is necessary because one-way broadband service could meet some of the needs of rural communities and without such reporting there is no way to determine whether those needs are being met.”).

<sup>82</sup> See, e.g., 47 U.S.C. § 153 (43).

<sup>83</sup> *Local Competition and Broadband Reporting Notice*, ¶ 34.

<sup>84</sup> See *id.*

<sup>85</sup> 47 U.S.C. § 153(43).

<sup>86</sup> See *First Advanced Telecommunications Report*, ¶ 24. See also *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, CC Docket No. 96-45, ¶ 99 (1998).

<sup>87</sup> See *First Advanced Telecommunications Report*, ¶ 24.

<sup>88</sup> See *infra* Section IV.B. Exempting Smaller Entities (for discussion of reporting thresholds).

comprehensive understanding of the development of competition for local exchange and exchange access services. To advance our complementary goal of minimizing the burdens associated with this requirement, we exempt the smallest carriers -- incumbent, competitive, and mobile -- as discussed more fully in the following section.<sup>89</sup>

29. By collecting data from both incumbent and competitive LECs, we expect to gain a comprehensive view of the current market for local exchange and exchange access services. In evaluating the status of local competition, the significance of collecting data from incumbent LECs is unchallenged by commenters.<sup>90</sup> Indeed, based on revenues alone, incumbent LECs continued to claim well over 90% of the local telephony market in 1998.<sup>91</sup> Moreover, incumbent LECs provide significant inputs to competitive LECs, both in terms of resale and unbundled network elements.<sup>92</sup> Recognizing that many incumbent LECs offer, or will soon offer, local exchange and exchange access services outside of their traditional territories, we direct incumbent LECs to file separate copies of the form for their incumbent LEC and competitive LEC operations.<sup>93</sup> By obtaining this data separately, we will gain greater insight into the degree of incumbent LEC expansion that would otherwise be undetectable, were they to report their incumbent and competitive LEC activities on the same form.

30. Collecting local competition data from competitive LECs is imperative, as well. Our experience with the voluntary surveys shows that we cannot get a reasonably accurate picture of the status of local competition from incumbent-provided information alone.<sup>94</sup> For example, to the extent that a competing local telephone service provider supplies service to customers using its own facilities, its customer lines would not be included in reports of incumbent LECs. We have stated our expectation that, over time, competitors will deploy their own facilities in markets where it is economically feasible to do so, because it is only through owning and operating their own facilities that competitors have control over the competitive and operational characteristics of their service.<sup>95</sup> Indeed, we have also stated our belief that, in some areas, the greatest benefits for consumers may be achieved through facilities-based competition.<sup>96</sup> These expectations for facilities build-out strengthen our conclusion that

<sup>89</sup> More precisely, we exempt LECs with less than 10,000 voice-grade equivalent lines or wireless channels (of any capacity) in a given state, and mobile telephony providers with less than 10,000 mobile telephony subscribers in a given state. See *infra* Section IV.B. Exempting Smaller Entities.

<sup>90</sup> See, e.g., TRA Comments at 5-6 (noting the importance of collecting data from incumbent LECs); U S WEST Comments at 1.

<sup>91</sup> See FCC, Common Carrier Bureau, Industry Analysis Division, *Local Competition: August 1999*, tbl. 2.1 (rel. Aug. 1999) ("Even under the most expansive definition of local service competition . . . the ILECs retain 96% of local service revenues.").

<sup>92</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, CC Docket No. 96-98, ¶ 13 (rel. Nov. 5, 1999) (*UNE Remand Order*).

<sup>93</sup> See, e.g., *SBC-Ameritech Merger Order*, ¶¶ 348 *et seq* (imposing conditions designed to foster significant out-of-region competition by SBC-Ameritech).

<sup>94</sup> See, e.g., Bell Atlantic Comments at 3; SBC Comments at 1; USTA Reply Comments at 1-2.

<sup>95</sup> *UNE Remand Order*, ¶ 7.

<sup>96</sup> *UNE Remand Order*, ¶ 5.

we must collect data relating to all three of the competitive paths Congress set forth in section 251 and, thus, that competitive LECs must participate directly in this program.<sup>97</sup> We make clear, moreover, that we require data on local telephone service not only from facilities-based LECs but from all LECs, *i.e.*, including firms that operate solely as resellers.<sup>98</sup>

31. Through our previous efforts to monitor the status of competition for local exchange and exchange access services, we have seen ample evidence to suggest that both incumbent LECs and new entrants are exploring the use of non-wireline technologies to deliver local telephone service.<sup>99</sup> Accordingly, we decide, as proposed in the Notice, that the obligation to complete the form should not depend on the type of technology that an incumbent LEC or a competitive LEC uses to provide local service. Thus, our rules require that all LECs of a defined size should report regardless of whether the LEC utilizes wireline or wireless technologies to provide local service.<sup>100</sup> For example, competitive LECs which utilize fixed wireless technology to provide local exchange or exchange access services will be required to complete the form if they provide service above our defined threshold. Similarly, competitive LECs which provide local exchange or exchange access services over a hybrid fiber-coaxial platform will be required to complete the form if they otherwise qualify. We believe that only by establishing the scope of the reporting requirement to include these LECs will we be able to gain an adequate understanding of the changing dynamics of the market for local telephone service.

32. In addition to these providers of local telephone services, we require facilities-based providers of mobile telephony services to participate, to a limited extent,<sup>101</sup> in this data collection program to the extent that they meet the local competition reporting threshold.<sup>102</sup> The mobile telephony market generally includes facilities-based providers of cellular, broadband personal communications service (PCS), and specialized mobile radio (SMR) services that offer real-time, two-way switched voice service that is interconnected with the public switched network utilizing an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls, as well as resellers of these services. In addition to terrestrial mobile providers, providers using satellite

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<sup>97</sup> 47 U.S.C. § 251(c). Section 251 grants competitors flexibility in their competitive arrangements by requiring incumbent LECs to provide requesting telecommunications carriers: 1) interconnection at any technically feasible point; 2) access to unbundled network elements; and 3) retail telecommunications services for resale.

<sup>98</sup> See TRA Comments at 3 (supporting the inclusion of resellers in this information collection). In contrast, however, we only require *facilities-based* providers of mobile telephone services to report data in Part III of the form. See *infra* ¶ 34. Similarly, we only require broadband data from facilities-based providers of broadband services. See *supra* ¶ 27.

<sup>99</sup> See, e.g., Winstar Comments at 1. See also "AT&T Announces Plans to Create New Wireless Company," News Release (Dec. 6, 1999) (reporting AT&T's "plans to develop a wireless local exchange capability nationwide in areas of the U.S. not served by the company's cable operations") available at <<http://www.att.com/press/item/0,1354,2321,00.html>>.

<sup>100</sup> See, e.g., Teligent Comments at 4 n.8 (supporting tentative conclusion "that the obligation to complete the survey should not depend on the technology used to provide service").

<sup>101</sup> See, *infra*, Section III.E. Data to Be Reported.

<sup>102</sup> See, *infra*, Section III.B. Exempting Smaller Entities.

technology can also offer mobile telephony services.<sup>103</sup>

33. As we have previously concluded in other contexts, certain providers of mobile telephony services have the potential to compete directly with traditional providers of wireline telephony services,<sup>104</sup> and we have found that typical broadband PCS and cellular telephony services meet the statutory definition of "telephone exchange service" in section 3(47)(A) of the Act.<sup>105</sup> We recognize, of course, that in the specific context of previous section 271 applications, the Commission has articulated standards that restrict the consideration of mobile telephony services when determining the presence of a facilities-based competitor.<sup>106</sup> We nevertheless conclude that, because of their practical potential as a substitute for wireline service,<sup>107</sup> it will be valuable to obtain data on the deployment of mobile telephony services. We thus reject the suggestions of some commenters that data on mobile telephony subscribers will provide no insight into competition for local telephony services.<sup>108</sup> To the contrary, we expect that even this limited data on mobile telephony subscribers will enhance our understanding of the developing potential of mobile telephony to substitute for wireline local service.<sup>109</sup> At the same time, we consider that the limited amount of information sought from mobile service providers will impose the smallest

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<sup>103</sup> Satellite services, particularly geo-stationary L-band mobile satellite services and big low earth orbit systems (non-geostationary satellites) may in the future become significant providers of mobile telephony services in the United States. However, at present, only Iridium and Globalstar, among the licensed big LEO systems, have commenced offering commercial service and currently each has only a small number of subscribers. Banc of America Securities, Equity Research, *Payload Monthly* (Feb. 1, 2000) at 12, 21, 29. Iridium recently announced the termination of commercial service after unsuccessful negotiations to find a qualified buyer of its system. *Iridium Press Release* (Mar. 17, 2000) at 1.

<sup>104</sup> See *Telephone Number Portability*, Second Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd 21204, 21228-31, CC Docket No. 95-116, ¶¶ 51-59 (1998); see also *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Memorandum Opinion and Order, 12 FCC Rcd 22665, 22702-05, CC Docket No. 94-102, ¶¶ 75-83 (1997).

<sup>105</sup> 47 U.S.C. § 153(47)(A). See *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, FCC 98-271, CC Docket No. 98-121 (rel. Oct. 13, 1998), ¶¶ 28-30 (*BellSouth Louisiana Order*). While we reached our conclusion in the context of a section 271 application, the status of mobile wireless telephony service in the local market may enable future decisions to regulate wireline telephony services in a flexible manner.

<sup>106</sup> For example, the Commission has determined that broadband PCS carriers may be considered competitors, within the meaning of section 271(c)(1)(A), only to the extent that their service is being used to replace wireline service, not as a supplement to wireline service. *BellSouth Louisiana Order*, ¶ 31. Moreover, pursuant to section 271(c)(1)(A), cellular telephone service may not be treated as telephone exchange service when considering the presence of a facilities-based competitor under Track A. 47 U.S.C. § 271(c)(1)(A).

<sup>107</sup> As the Commission has previously stated, there is evidence to suggest that PCS providers "appear to be positioning their service offerings to become competitive with wireline service." *BellSouth Louisiana Order*, ¶ 33.

<sup>108</sup> See, e.g., Bell Atlantic Mobile Comments at 2-3; GTE Comments at 5; Omnipoint Comments at 7.

<sup>109</sup> See, e.g., Arkansas Commission Comments at 2.

burden on such carriers consistent with our need to have access to necessary information.<sup>110</sup>

## **B. Exempting Smaller Entities**

### **1. Background**

34. We tentatively concluded, in the Notice, that we could exempt smaller entities from reporting without materially affecting our ability to effectively assess the development of local competition.<sup>111</sup> We proposed to consider exemption criteria separately as applied to local competition and broadband service providers. We proposed, for purposes of reporting broadband data, that any firm that provides at least 1,000 full broadband service lines (or wireless channels) nationwide, or has at least 1,000 full broadband customers nationwide, should be required to complete applicable portions of the form.<sup>112</sup> For purposes of reporting local competition data, we tentatively concluded that we should require local exchange carriers with 50,000 or more local access lines or channels (of any capacity)<sup>113</sup> nationwide, and mobile telephony providers with 50,000 or more subscribers nationwide to comply with our proposed reporting requirement.<sup>114</sup>

### **2. Overview**

35. We conclude that we can exempt from reporting certain of the smallest service providers without materially affecting our ability to effectively assess the development of local telephone competition and the deployment of broadband services. In setting these reporting thresholds, we balance our inclination to establish a more inclusive reporting requirement that will necessarily provide a more comprehensive understanding of competition for local telephone service and broadband deployment with our desire to exempt entities with the fewest resources to divert to reporting obligations.<sup>115</sup> Weighing these priorities at this time, we are guided by our belief that many of the most underserved communities may be served by only the smallest providers, *i.e.*, those that are scaled to be financially successful in small markets.<sup>116</sup> Indeed, by excluding any providers we necessarily face the possibility of understating the amount of competitive activity and broadband deployment in smaller, rural areas. Thus, we expect

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<sup>110</sup> See *infra* Section IV.E. Data to Be Reported. For example, we accept PCIA's suggestion that mobile telephony providers not be required to report separately the business and residential customers. PCIA Reply Comments at 7.

<sup>111</sup> *Local Competition and Broadband Reporting Notice*, ¶¶ 37-45.

<sup>112</sup> *Id.* at ¶ 41.

<sup>113</sup> See *id.* at ¶ 38 n.52 (discussing the term "access lines").

<sup>114</sup> *Id.* at ¶¶ 38-39, 42.

<sup>115</sup> See also *supra* n.62 (discussing the Commission's efforts to craft its rules in such a manner that the burdens imposed take into account any potentially disparate impact such rules may have on smaller entities).

<sup>116</sup> See, e.g., Rural Task Force, *The Rural Difference: White Paper 2* available at <<http://www.wutc.wa.gov/rtf>> (Jan. 2000). See also, ALA Reply Comments at 5 ("smaller and non-telecom entities may be the only provider of broadband in rural and remote areas"); Tennessee OAG Comments at 6-7 (stating that all broadband providers should be required to report); SBC Comments at 3 (arguing that a true picture of the state of deployment of broadband services requires that the number of reporting carriers not be limited).

that these thresholds may require adjustment over time. We are committed to revising these thresholds (either upward or downward) should it be necessary based either on our experience or on changes in the relevant markets. We also state our intention to work with small providers of broadband and local telephony services as issues arise to facilitate reporting procedures that may have unanticipated, disparate effects on them.

36. As discussed below, we adopt a different threshold for providers of broadband services than we do for providers of local telephony services. By carefully tailoring the reporting requirement, we expect to satisfy the overlapping but particular needs for data on broadband deployment and the development of local competition. We do not adopt a proposal in the Notice to require local exchange carriers that fall below our local competition reporting threshold to nevertheless report local competition data if they exceed the threshold for broadband reporting.<sup>117</sup> Thus, we accept the suggestions made by several commenters to apply these thresholds separately.<sup>118</sup> This ensures that the entity reporting under either part of the form is a significant entrant in the market before it must comply with this reporting requirement.

37. Applicable to both reporting thresholds, we make clear that the reporting thresholds should be calculated based collectively on all commonly-owned or commonly-controlled affiliates.<sup>119</sup> That is, a provider should report for each state in which it and all affiliates collectively meet the reporting thresholds. We nevertheless permit such affiliates to file forms for such states either combined or separately. This approach will grant providers flexibility about whether to file at the holding company level or for each separate legal entity,<sup>120</sup> yet will ensure that providers' decisions about how to report will not affect whether or not they must file.<sup>121</sup>

38. We discuss, below, the specific reporting thresholds for the broadband and local competition portions of the form.

### **3. Threshold for Broadband Reporting**

39. With respect specifically to broadband service we note that Congress has directed us to track the deployment of advanced telecommunications capability to all Americans.<sup>122</sup> Given the broad reach of

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<sup>117</sup> *Local Competition and Broadband Reporting Notice*, ¶¶ 38, 43.

<sup>118</sup> NTCA Comments at 3-4. *See also* AT&T Comments at n.15; NorthPoint Comments at 6; OPASTCO Comments at 3.

<sup>119</sup> *See* 47 U.S.C. § 153(1) (clarifying that a 10 percent equity interest constitutes ownership). *See also* 47 C.F.R. § 32.9000.

<sup>120</sup> We note, of course, that some incumbent LECs, namely those with both incumbent LEC and competitive LEC operations, are required to file multiple forms for activities that may be conducted through a single legal entity. This is because we require incumbent LECs to file separate forms for the incumbent and competitive LEC operations in any given state. *See supra* ¶ 29.

<sup>121</sup> Similarly, this approach will prevent entities from avoiding our state-by-state reporting thresholds simply through their choice of how to report.

<sup>122</sup> *See* 1996 Act, § 706(b).

this directive, we conclude that we should establish a more comprehensive reporting requirement for providers of broadband services to ensure that we do not miss broadband developments by smaller entities, for example, in rural areas. We decide, in particular, that any facilities-based firm that provides at least 250 full or one-way broadband service lines (or wireless channels) in a given state, or has at least 250 full or one-way broadband customers in a given state, should be required to complete applicable portions of the form for that state.<sup>123</sup> By moving to a state-by-state threshold, we seek greater insight into the development of broadband markets within particular states and in specific geographical areas. We conclude that a state-level threshold will only require reporting from firms with significant presence in a particular state.

40. We conclude that a 250 broadband line or wireless channel threshold will best meet the Commission's needs. We are mindful in arriving at this threshold that the market for broadband services is relatively new, dynamic, and untested. Given the nascent state of broadband deployment and our particular interest in deployment of broadband services to rural and underserved areas, we think that a relatively low threshold is necessary to capture an accurate picture of the current state of deployment. Moreover, a threshold set too high might lead to a false conclusion about the deployment of broadband, particularly in rural areas. Even setting this relatively low reporting threshold, we note that for the median rural incumbent LEC to meet this reporting threshold, it would have to successfully deploy and market broadband to a fairly high percentage of (about 10%) of its regular telephone customers.<sup>124</sup> We emphasize, however, that to balance what we believe to be a very comprehensive reporting threshold, we have streamlined the broadband section of the reporting form so that it includes only the most essential information, in as simple a format as possible. Nevertheless, we state our intention to revisit the suitability of this threshold, in the future, should we determine that it either places undue burdens on responding entities or that it is set too high to include a significant portion of the broadband lines in service.

#### **4. Threshold for Local Competition Reporting**

41. We decide, for purposes of reporting local competition data, that incumbent and competitive LECs need only complete forms for states in which they provide 10,000 or more voice-grade equivalent lines or wireless channels.<sup>125</sup> In moving to a state-by-state reporting threshold, as opposed to a national threshold, we expect to gain a better understanding of the development of local competition in specific markets. Similarly, by adopting a threshold of 10,000 voice-grade equivalent lines or wireless channels that is less than the threshold that we proposed in the Notice, we make special efforts to detect the

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<sup>123</sup> See *supra* ¶ 22 (discussing the terms "full broadband" and "one-way broadband").

<sup>124</sup> Staff estimate based on the median number of Universal Service Fund (USF) loops in a state for incumbent LECs with under 50,000 USF loops nationwide.

<sup>125</sup> For purposes of this data collection, "voice-grade equivalent lines/channels" are defined as analog circuits having 3 to 4 kHz of bandwidth, the digital equivalent of which is a 64 Kbps circuit, or DS0. See, e.g., U.S. Department of Commerce, National Telecommunications and Information Administration, "Telecommunications: Glossary of Telecommunications Terms" available at <<http://glossary.its.bldrdoc.gov/fs-1037>> (visited 3/15/00) (providing definitions of voice grade; voice frequency (VF); voice frequency (VF) channel; and digital signal 0 (DS0)).

presence of competition for local exchange and exchange access services in rural areas.<sup>126</sup> In that regard, we disagree with National Rural Telecom Association (NRTA) to the extent that it suggests that the Commission should not monitor competition in rural areas at this time.<sup>127</sup> At the same time, under this threshold we will still exclude from reporting the smallest carriers and, indeed, the vast majority of small LECs.<sup>128</sup>

42. We conclude that a 10,000 voice grade line or wireless channel threshold will allow the Commission to collect data from the significant participants in most markets without imposing burdens on entities that are relatively small. We set the threshold for reporting local telephone service data at this level because we believe that we must collect data, in particular, from competitive LECs that are becoming significant market participants, but that may have very small portions of the overall market, at this time. Thus, we have set this threshold at a level that we expect will allow us to detect emerging market participants when they achieve a fairly significant presence in a given market.<sup>129</sup> For example, a competitive LEC that targets residential customers in a state with a relatively small population, such as Wyoming, would have to attain a 5% share of the residential market in the state, before reporting.<sup>130</sup> Similarly, based on at least one definition of a rural incumbent LEC (50,000 local access lines nationwide), a competitive LEC would have to achieve a 20% market share in the territory of the largest rural incumbent LECs before it would be required to report.<sup>131</sup> Among incumbents, we estimate that the vast majority will not have to report pursuant to this requirement, even though the vast majority of incumbent LEC lines will be accounted for in this information collection.<sup>132</sup>

43. We decline to adopt NRTA's suggestion<sup>133</sup> that we exempt from reporting any entity that

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<sup>126</sup> See, e.g., *supra* n.116, *The Rural Difference* (concluding that the population density of areas served by rural carriers is substantially less than that for non-rural carriers and that rural carriers "almost always serve the minority of the access lines in a given state").

<sup>127</sup> NRTA Comments at 3-4 ("rural ILECs should remain exempt from reporting until their states have lawfully terminated their exemptions to § 251(c)").

<sup>128</sup> Indeed, we estimate that only 162 of the largest 925 incumbent LEC holding companies will be required to report based on this threshold. On average, each incumbent LEC will file for less than two states. We estimate, however, that over 98% of incumbent LEC lines will be reported given this threshold.

<sup>129</sup> See, e.g., Bell Atlantic Comments at 4 ("[r]educing the threshold to 10,000 lines would give a truer picture of the extent of voice-grade competition"); NCTA Comments at 10-11 ("Until the critical mass of 10,000 subscribers within a state is reached, the business will be too small relative to ILEC and other CLEC competitors to justify state-by-state reporting."); GSA Reply Comments at 10. *Contra* NTCA Comments at 3 (supporting a 50,000 line threshold because it "significantly reduces the burden on small and rural LECs"); Roseville Reply Comments at 3-4 (stating that a 10,000 line threshold would be "detrimental to all carriers other than those which are very large"); TRA Reply Comments at 2-3 (opposing commenter proposals to adopt 10,000 line per state threshold).

<sup>130</sup> According to data tabulated from the Bureau of Commerce, *Current Population Survey*, there were 191,000 households in Wyoming as of November 1999.

<sup>131</sup> See 47 U.S.C. § 153(37)(B).

<sup>132</sup> As noted above, we estimate that over 98% of incumbent LEC lines will be reported given this threshold.

<sup>133</sup> NRTA Comments at 2-4.



satisfies the definition of a “rural telephone company” as set out in section 3 of the Act<sup>134</sup> because we conclude that a more comprehensive reporting requirement is necessary to detect the development of competition for local telecommunications services, especially in rural areas. Section 3 of the Act offers multiple criteria, pursuant to which a LEC may qualify as a rural telephone company.<sup>135</sup> Several of these provisions would exempt LECs that may serve a significant share of the local telecommunications market in a given state. For example, an exemption based on section 3(37)(C) would exempt LECs -- both incumbent and competitive -- providing local exchange service to any local exchange study area with up to 99,999 lines.<sup>136</sup> Similarly, an exemption based on section 3(37)(B) -- as proposed in the Notice -- would exempt LECs that provide local exchange service to fewer than 50,000 local access lines nationwide.<sup>137</sup> We conclude that such exemptions could leave large gaps in the data collected and would give us significantly less insight into the development of local telephone competition in any given state, and in rural areas in particular. In many states, a LEC, particularly a new entrant, with 50,000 lines would represent a significant market competitor. We also reject the suggestion of Roseville Telephone Company that we exempt all “rural carriers” as defined in section 251(f)(2) of the Act.<sup>138</sup> This section defines a “rural carrier” as “a local exchange carrier with fewer than 2 percent of the Nation’s subscriber lines installed in the aggregate nationwide . . . .”<sup>139</sup> Thus, an exemption based on this definition would exempt LECs with approximately 3.5 million lines.<sup>140</sup> Much like the other commenter proposals rejected above, this proposal would significantly undermine our ability to monitor the development of local telephone competition. We agree that Congress did provide for special consideration of the rural telephone companies in the implementation of specific provisions of the 1996 Act.<sup>141</sup> Nowhere in the Act, however, do we find any indication that Congress sought to prevent the development of competition in rural areas or expected that competition would not ever develop in those areas. We conclude that a 10,000 voice-grade equivalent line or wireless channel threshold best balances our competing goals of collecting comprehensive data, including data about development of local telephone competition in rural areas, and reducing burdens on the smallest entities.

44. We agree with those commenters that suggest that adopting a state-by-state reporting threshold will result in a more detailed and useful picture of the development of competition than would a national threshold.<sup>142</sup> While a national threshold would enable us to obtain a snapshot of the relative success of the largest competitive carriers, we conclude that it is less desirable because it would provide

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<sup>134</sup> 47 U.S.C. § 153(37).

<sup>135</sup> *Id.*

<sup>136</sup> See 47 U.S.C. § 153(37)(C) (defining a company as a “rural telephone company” to the extent that it “provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines”).

<sup>137</sup> See 47 U.S.C. § 153(37)(B).

<sup>138</sup> 47 U.S.C. § 251(f)(2).

<sup>139</sup> *Id.*

<sup>140</sup> See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service* (rel. Sept. 1999) at tbl. 20.1 (there were about 180 million total U.S. telephone lines at the end of 1998).

<sup>141</sup> See, e.g., 47 U.S.C. § 251(f)(1) (providing an exemption for certain rural telephone companies).

<sup>142</sup> See, e.g., AT&T Comments at 10.

little insight into the status of competition in any given state or smaller geographic market. For example, with a national threshold, we would exempt carriers with significant market presence in one state, while requiring reporting from carriers with very small operations in multiple states.<sup>143</sup> In contrast, a state-by-state reporting threshold will enable us to collect data from significant competitors that have chosen to concentrate their operations in one state. Stated more broadly, a state-level threshold will enable this Commission and other policy makers to compare and contrast characteristics of different states in order to determine which characteristics seem to influence competition. We believe that this type of analysis will be extremely valuable both to the Commission and our colleagues in state commissions.

45. Among competitive LECs, we make special provision for cable companies providing local exchange telephony services, given their relative inexperience with reporting measures originally adopted for incumbent LECs. As with other LECs, such companies must report if they provide 10,000 or more voice-grade equivalent lines or wireless channels in a given state. While some cable companies that provide local telephony service already compile and report numbers of telephone lines or circuits provided,<sup>144</sup> we recognize that cable companies historically have described their cable television service volume in terms of number of actual subscribers. Thus, we specify that cable companies providing local telephone services may consider, in determining whether they meet the reporting threshold, their local telephone subscribership in a given state, rather than voice-grade equivalent lines in a state, where the latter is unavailable.<sup>145</sup> We note, however, that because many customers have more than one voice grade telephone line in service, information about numbers of telephone subscribers is generally less useful, for purposes of evaluating the status of local telephone service competition, than is information about numbers of lines (or equivalent circuits) in service. Thus, we permit cable companies providing local telephone service to report based on subscribers only where information on voice-grade equivalent lines in service is not available.

46. We decline to adopt a proposal to use the number of homes passed by cable telephony services -- as opposed to actual local access lines provided or telephony subscribers served -- as an alternative threshold for cable companies.<sup>146</sup> Rather, we prefer to focus on the actual delivery of service because we conclude it provides a more accurate picture of the current state of competition for local telephony services. This focus reflects our understanding that the development of competition for local exchange and exchange access services depends not only on a firm's potential to offer these services at some point in the future, but also on the ability of these firms to configure their facilities in a manner that will allow them to deliver these services at prices -- and with sufficient quality -- to make their services attractive to customers.

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<sup>143</sup> See NRTA Comments 4-6.

<sup>144</sup> For example, MediaOne Group reports number of residential telephone lines (13,000 as of 12/31/98) as well as number of high speed data (i.e., Internet access service) subscribers (84,000). See MediaOne Group, Inc. SEC 1998 Form 10-K Annual Report (filed Mar. 30, 1999) at 11. Similarly, Cox Communications reports, for residential telephony customers, both number of customers (27,819 as of 12/31/98) and number of lines (42,668) and, for business telephony customers, number of voice-grade equivalent circuits (322,615). See Cox 1998 10-K at 7.

<sup>145</sup> Because cable television companies currently do not provide telephony subscriber data to the Commission, we have no estimate of the number of cable companies, if any, that have at least 10,000 telephony subscribers in a given state.

<sup>146</sup> See *Local Competition and Broadband Reporting Notice*, ¶ 40.

47. We similarly clarify our rules for mobile telephony service providers to accommodate their practice of reporting number of subscribers, rather than voice grade lines or channels *per se*.<sup>147</sup> Accordingly, our rules do not require mobile telephony providers to report for states in which they have fewer than 10,000 subscribers.<sup>148</sup> We do not know the precise number of mobile telephony providers with at least 10,000 subscribers in a given state, because mobile telephony providers currently do not report subscribership data to the Commission and reliable public data are sparse for facilities-based cellular operators with fewer than about 300,000 subscribers.<sup>149</sup> Thus, we expect that this threshold will allow us to obtain information about the presence in the market of mobile telephony providers that are serving a substantial number of customers and that may be best positioned to offer services as a substitute to wireline local exchange service.<sup>150</sup>

## C. Definition of Reporting Area

### 1. Background

48. In the Notice, we stated our view that for data to be useful it must be reported on a geographically coherent and consistent basis by all entities submitting data.<sup>151</sup> We, therefore, tentatively concluded that we should, at a minimum, require data to be reported by state for both the broadband and local telephone competition portions of the form.<sup>152</sup> We sought comment on whether the data should be collected, from some or all reporting entities, at some more narrowly defined geographic area, given that reporting by smaller geographic areas might yield sharper pictures of the extent and intensity of these developments.<sup>153</sup>

### 2. Discussion

49. We require providers to report data, in accordance with the Local Competition and Broadband Reporting form attached, on a state-by-state basis. In reaching this decision, we balance our desire to collect data that will allow us to assess the state of competition for local telephone service and

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<sup>147</sup> See, e.g., CTIA's *Semi-Annual Wireless Industry Survey* available at <<http://www.wow-com.com/wirelessurvey>>.

<sup>148</sup> We use the number of handsets as a proxy for subscribers, rather than the number of bills, because that number is more analogous to a voice grade line on the reporting side. However, for purposes of determining whether a provider meets the reporting threshold in a given state, providers may rely on the number of billing addresses.

<sup>149</sup> Public sources of data on mobile telephony subscribership of individual carriers are summarized and analyzed in *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Fourth Report, FCC 99-136 (rel. June 24, 1999) (*Fourth Annual CMRS Competition Report*).

<sup>150</sup> As discussed below, *infra* ¶¶84-85, we ask only for limited information about the number of mobile telephony service subscribers in each state where these services are offered.

<sup>151</sup> *Local Competition and Broadband Reporting Notice*, ¶ 46.

<sup>152</sup> *Id.* at ¶¶ 46-49.

<sup>153</sup> *Id.* at ¶ 49.

broadband deployment in discrete geographic areas of the country with our desire to minimize the burdens on the service providers that will report to us.<sup>154</sup> As discussed above,<sup>155</sup> we decide that reporting at a national level would provide little useful information about the development of competition in particular states and in finer geographic areas. Moreover, requiring state-by-state reporting from all reporting entities should facilitate meaningful comparison within different regions of the country and, we expect, should enable state commissions to compare and evaluate the effectiveness of the policies that they adopt.<sup>156</sup> We also conclude that state-by-state data will be administratively easy for providers to compile and for Commission staff to analyze.

50. Indeed, we believe that compiling local competition and broadband deployment information by state will not be administratively difficult for any reporting entity, particularly in comparison with compiling information for smaller geographic areas on a consistent basis. We note that many commenters, including potential respondents to this information collection, support our proposal to collect data on a state-by-state basis<sup>157</sup> and none take exception to our tentative conclusion that all carriers maintain state-by-state data for a variety of tax, regulatory, and other purposes.<sup>158</sup> Moreover, no other geographic classification system appears to offer the same comparability and administrative ease. In the telecommunications industry, for example, new local service competitors need not use any of the geographic classification systems that are traditional in the industry, such as telephone exchanges, incumbent LEC study areas, or local access and transport areas (LATAs), although they must comply with requirements legitimately imposed by state regulatory authorities. Similarly, providers of terrestrial mobile wireless telephony services have received licenses to serve markets defined, variously, as Major Trading Areas, Basic Trading Areas, Metropolitan Statistical Areas, Rural Service Areas, and Economic Areas.<sup>159</sup> The situation with respect to broadband services is even more complex,<sup>160</sup> confirming our view that state reporting will provide the smallest common geographic denominator among these varied entities.<sup>161</sup>

<sup>154</sup> See, e.g., GTE Comments at 10-11; NorthPoint Comments at 2-3; PCIA Comments at 6; Sprint Comments at 2-3; AT&T Reply Comments at 7. See also NCTA Comments at 6-7.

<sup>155</sup> See *supra* ¶ 44 (comparing state-by-state reporting thresholds with national thresholds).

<sup>156</sup> See ALTS Comments at 7 ("collecting information on a state by state basis is more likely to result in the federal collection of information satisfying the needs of the states and will result in less duplication of efforts between the states and the Commission"); PCIA Reply Comments at 4 n.12.

<sup>157</sup> See, e.g., American Cable Association Comments at 12; NorthPoint Comments at 2-3; AT&T Reply Comments at 6 ("Virtually every commenter agrees the required data should be collected on a state-by-state basis. [Citation omitted]").

<sup>158</sup> See, e.g., ALTS Comments at 6; TRA Comments at 6.

<sup>159</sup> See, e.g., Third Annual CMRS Competition Report at tbl. 1A.

<sup>160</sup> Providers of broadband services may include, for example, cable television companies, utilities, MMDS/MDS/"wireless cable" carriers, and satellite-based wireless carriers, with service territories that do not correspond with the "exchanges" and "study areas" of the incumbent LEC industry.

<sup>161</sup> See, e.g., ALTS Comments at 6-7; GTE Comments at 10-11; NorthPoint Comments at 3 ("it would be useful and not unduly burdensome to have all entities ... report data on a state-by-state basis"). But see Nextel Comments at 3 (noting that it is difficult for mobile telephony providers to accurately report subscribership by state).

51. While state-by-state reporting will provide valuable data that is otherwise unavailable to us, we nevertheless conclude it necessary to develop even sharper pictures of the extent and intensity of local telephone competition and broadband deployment.<sup>162</sup> In this regard, we share commenters' concerns that information collected on a state-by-state basis may not enable us to detect differences in competitive activity or broadband deployment among distinct communities within a given state. For example, such data might allow us to conclude that broadband is being deployed in a reasonable and timely manner in New Mexico as a whole, but may not permit us to find whether all such deployment is in Albuquerque while deployment in rural New Mexico may not be reasonable and timely. Such distinctions would be less apparent were we to allow providers to report at the national level. Thus, we decline to adopt our proposal to permit broadband entities that serve fewer than 2,000 subscribers nationwide to report on a nationwide, rather than a statewide, basis.<sup>163</sup>

52. To develop this more nuanced understanding of local telephone competition and broadband deployment, we direct providers to compile a list of the Zip Codes in which they offer local telephony and broadband services for each state in which they complete Form 477. Such lists should be easily obtainable from companies' provisioning or billing databases and will give the Commission insight into the areas served by particular providers.<sup>164</sup> By knowing whether any or multiple providers are serving a given Zip Code, the Commission will have a much clearer understanding of which customers have -- or are likely to have in the near future -- a choice among service providers. We conclude that this data, used in conjunction with other publicly-available data, will enable the Commission and others to determine the availability of services and competition in discrete geographic areas, including rural areas and other traditionally underserved areas.

53. We thus decline the suggestions of some commenters that we require providers to complete and file forms at some finer geographic levels, such as the census block level or the Zip Code level.<sup>165</sup> As described above, we conclude that completing forms at these finer levels of geographic granularity would be administratively more difficult for providers. Not only would providers have to identify data at those levels of detail, but we think that a reporting requirement that requires a national service provider to complete over 30,000 zip-code based forms would impose costs far greater than the benefits to be derived.<sup>166</sup>

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<sup>162</sup> See, e.g., Tennessee OAG Comments at 4; SBC Comments at 4-5; U S WEST Comments at 4; GSA Reply Comments at 13.

<sup>163</sup> *Local Competition and Broadband Reporting Notice*, ¶ 71.

<sup>164</sup> We note that many providers maintain and utilize maps to guide their deployment of facilities and expect that the Zip Code data reported in Part V of the form can be used to create similar maps showing where broadband and local exchange services are being provided. See, e.g., "SBC Becomes America's Largest Single Broadband Provider With \$6 Billion Initiative" available at <[http://www.sbc.com/Technology/data\\_strategy/project\\_pronto/Home.html](http://www.sbc.com/Technology/data_strategy/project_pronto/Home.html)>; "U S WEST Network Disclosure Announcement No. 431" available at <<http://www.uswest.com/disclosures/netdisclosure431>>.

<sup>165</sup> See, e.g., TRA Comments at 5-6; U S WEST Comments at 3; ALA Reply Comments at 6.

<sup>166</sup> See generally Allegiance Comments at 6 ("the more geographically specific the information to be reported, the greater the burdens imposed on reporting entities, particularly new entrants, who do not maintain subscriber or line data by such narrow geographic categories"); ALTS Comments at 7; Sprint Comments at 3.

54. In order to further develop our understanding of local telephone competition and broadband deployment in discrete areas, we also plan to continue our efforts to locate and utilize data available from any alternative sources, such as numbering resources databases, number portability databases, or E-911 databases. It is our hope that these sources may eventually provide us with additional information about local telephone competition and broadband deployment at finer levels of geographic granularity.<sup>167</sup>

#### **D. Frequency of Reports**

##### **1. Background**

55. We sought comment in the Notice about whether collecting data quarterly, semi-annually, or annually would best serve the goals of this data collection program.<sup>168</sup> We further asked commenters whether we should apply the same frequency requirements for both local competition and broadband reporting.<sup>169</sup>

##### **2. Discussion**

56. We decide that we can best balance our need for timely information with our desire to minimize the reporting burden on respondents by requiring providers to report data on a semi-annual basis. Given that, from the perspective of most consumers, broadband deployment and competition for local telephone services are still at relatively early stages of development,<sup>170</sup> we believe that it is vital to collect information about trends in this area on a frequent basis.<sup>171</sup> With semi-annual reporting, we expect to develop a picture of local telecommunications competition and broadband deployment that will be, to our knowledge, the most accurate, comprehensive, and timely one available. Collecting data on a semi-annual basis will also enable us to quickly compose a baseline assessment of these markets. Moreover, we agree with those commenters, including many potential respondents to this information collection, that state that semi-annual filing will satisfy the Commission's needs without imposing an undue burden on providers.<sup>172</sup>

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<sup>167</sup> See, e.g., *Numbering Resource Optimization*, Notice of Proposed Rulemaking, FCC 99-122, CC Docket No. 99-200 (rel. June 2, 1999), ¶¶ 69-82 (discussing the need to strengthen the system for collecting data on current and forecasted utilization of telephone numbering resources; tentatively concluding that all users of telephone numbering resources should report telephone number status data at the rate center level, at a minimum).

<sup>168</sup> *Local Competition and Broadband Reporting Notice*, ¶¶ 35-36.

<sup>169</sup> *Id.* at ¶ 36.

<sup>170</sup> See *Second Advanced Telecommunications NOI*, ¶ 39 ("as of December 31, 1999, residential broadband completed its third year as a consumer product"); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, CC Docket No. 96-98 (rel. Nov. 5, 1999), ¶¶ 2-4.

<sup>171</sup> Bell Atlantic Comments at 4; ALTS Comments at 5; ACA Comments at 11.

<sup>172</sup> See, e.g., Northpoint Comments at 7; Teligent Comments at 2; Bell Atlantic Comments at 4; American Cable Association Comments at 11.

57. We take seriously commenters' concerns about the level of burden produced by more frequent filing regimes, such as quarterly filing. With those concerns in mind, we have limited this information collection to readily available data that providers should be able to report with minimal burden. Indeed, we believe that we have significantly streamlined the information collection, as compared with the proposed form released with the Notice. For example, we have eliminated much of the detailed reporting about types of technology used in providing broadband services that providers stated was particularly burdensome for them to compile. Moreover, we note that many of the providers that will be part of this information collection do not have significant historical contacts with the Commission.<sup>173</sup> Recognizing their relative inexperience with Commission reporting requirements, we adopt a less frequent reporting schedule than we otherwise might if this reporting requirement were limited to firms with more resources available for compliance matters.

58. We see no reason to adopt different reporting frequencies for the local competition and broadband portions of the form. A single timetable for reporting should be administratively easier and less confusing for potential respondents to both portions of the form. We necessarily decline those suggestions that we should only require broadband data on an annual basis. As the basis for this suggestion, several commenters cite the Commission's decision to issue annual reports pursuant to section 706 as evidence that we do not need more frequent data. Our commitment to issuing annual reports notwithstanding, we nevertheless conclude that that more frequent data on the state of broadband deployment will assist the Commission in a variety of other proceedings and uses. Finally, we decline TRA's suggestion that we require more frequent reporting by incumbent LECs.<sup>174</sup> TRA has presented us with no compelling evidence to suggest that more frequent reporting by incumbent LECs is warranted.

59. We thus direct that providers of local telephone service and broadband service (that meet the defined thresholds) should complete and file the FCC Form 477 twice per year. Providers will report end-of-year data on March 1<sup>st</sup> of the subsequent year and data on the first half of the year on September 1<sup>st</sup> of that same year. However, given our desire to collect data to be used in the second Advanced Telecommunications Report, we direct that all respondents should file their end-of-year 1999 data on May 15, 2000.

## **E. Data to be Reported**

### **1. Background**

60. We set out, in the Notice, specific data items that we tentatively concluded would reveal the pattern and speed of development of local competition and broadband services as they evolve.<sup>175</sup> We invited comment on whether those specific data items would be necessary and sufficient to describe and understand the state of local competition and deployment of broadband services in diverse areas of the nation and encouraged commenters to critique and suggest revisions to a proposed reporting form.<sup>176</sup>

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<sup>173</sup> See, e.g., ALTS Comments at 2.

<sup>174</sup> See, e.g., TRA Comments at 7 (proposing quarterly reporting by competitive LECs and monthly reporting by incumbent LECs).

<sup>175</sup> *Local Competition and Broadband Reporting Notice*, ¶¶ 50-73.

<sup>176</sup> *Id.*

## 2. Overview

61. Based on our experience with the Bureau's voluntary survey program, our *First Advanced Telecommunications Report*, and the extensive suggestions received in the record to this proceeding, we adopt the form attached in Appendix B to gather data on the status of local competition and the deployment of broadband services. With these experiences in mind, we select for this reporting program data that we believe will best complement the other information available to us. In combination with other data – for example, revenue data from the universal service support mechanisms – we expect to gain a comprehensive view of the development of local competition and broadband deployment as they evolve.<sup>177</sup>

62. As detailed below, the data collection is designed to assess competition in local telecommunications markets by focusing on service actually provided to end users and by examining the type of end users served (e.g., residential and small business *versus* large business, institutional, and government).<sup>178</sup> The form also collects information about the relative importance of the three methods by which local exchange and exchange access services to an individual end user can be provided: solely over facilities the respondent has constructed; by using unbundled network elements provided by another LEC; and by reselling the services of another LEC. The data collection will further illuminate the pattern of local competition by asking about the presence of operational collocation arrangements in incumbent LEC switching centers. To monitor broadband deployment, we have similarly focused on lines actually provided to end users. We also emphasize, in the broadband section of the form, the type of technology used to deliver these services. We conclude that the answers to these questions are necessary to describe and understand the state of competition for local telephone services and the deployment of broadband services in diverse areas of the nation.

63. While some commenters encourage us to collect data on other measures,<sup>179</sup> we believe that the information we have chosen to collect best balances our need to collect targeted data with our desire to minimize reporting burdens. For example, we expect that trends in the selected data may become apparent when reported over time and should shed light on questions (e.g., the speed with which competitive LECs can add customers) that might otherwise require separate information collection. We also believe that the local competition information we will collect is less extensive than the information

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<sup>177</sup> For example, the analysis presented in FCC, Common Carrier Bureau, Industry Analysis Division, *Local Competition: August 1999* (rel. Aug. 31, 1999) uses detailed revenue data reported for purposes of the universal service support mechanisms along with information collected in local competition surveys to develop a richer and more complete analysis of the status of local competition.

<sup>178</sup> In *First Advanced Telecommunications Report*, we drew a distinction between deployment of broadband for large and medium-sized business customers as a group and deployment of broadband to “the consumer market” that we considered to consist of small business and residential customers. See *First Advanced Telecommunications Report*, ¶¶ 26-28.

<sup>179</sup> See, e.g., ALTS Comments at 9 (number of requests pending for more than ninety days for which collocation has not been provided); ACA Comments at 13 (average number of homes passed; average number of customers per cable system node; average capital costs per subscriber); MediaOne Comments at 10 (number of switches deployed; number of active trunks connecting those switches to other carriers; number of working loops deployed; number of end user customers).